

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Updating the Intercarrier Compensation Regime to	)	WC Docket No. 18-155
Eliminate Access Arbitrage	)	

**REPLY COMMENTS OF INCOMPAS**

INCOMPAS, by its undersigned counsel, hereby submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Notice of Proposed Rulemaking*<sup>1</sup> on efforts to eliminate the financial incentives to engage in access stimulation as well as other harmful arbitrage schemes.

Given the disruptive impact that arbitrage schemes, like access stimulation, can have on the intercarrier compensation system, competitive voice service providers, and consumers, INCOMPAS appreciates the willingness of the Commission to address these ongoing and pernicious practices. As the Commission notes in the NPRM, access stimulation “distorts competition” and frustrates the voice services market by inflating the prices that interexchange carriers (“IXCs”) pay for switched access charges.<sup>2</sup> Working with a content provider via a revenue sharing agreement, access-stimulating local exchange carriers (“LECs”) have taken to using intermediate providers to evade Commission rules that require these carriers to reduce their access charges. As a result, a number of inefficiencies in the intercarrier compensation system have emerged, and the Commission should act not only to target this harmful behavior, but also

---

<sup>1</sup>*Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, FCC 18-68 (rel. June 5, 2018) (“NPRM”).

<sup>2</sup> NPRM at ¶ 1.

to correct this competitive distortion and restore the normal process for seeking reasonable compensation for the exchange of traffic.

In the NPRM, the Commission proposes to require access-stimulating local exchange carriers (“LECs”) to either accept financial responsibility “for applicable intermediate access provider terminating charges normally associated to an IXC” (while simultaneously prohibiting transport charges) or accept direct connection to an interexchange carrier or an intermediate carrier of the IXC’s choice.<sup>3</sup> Direct connection is one of the industry solutions that INCOMPAS members have used to meet their rural call completion obligations when rural calls are rejected or refused either as a result of, or well-founded fear of, access stimulation schemes, and so it is reassuring to see the Commission offer proposals aimed at eliminating the financial incentives to engage in traffic pumping.<sup>4</sup> Taken together with the proposal to revise access-stimulating LECs’ financial responsibility for access charges, these new requirements should allow the Commission to target the incentives for this errant behavior without having to make other fundamental changes, such as by addressing intermediate providers in a revised definition of “access stimulation.”

While INCOMPAS is encouraged that these proposals will be successful in reducing access stimulation, it is equally critical that the NPRM’s suggested notice requirement resolve compensation disputes between IXCs and LECs that are not participating in access stimulation. In response to allegations of arbitrage, IXCs have resorted to taking unilateral steps to thwart the access stimulation problem in the absence of more stringent Commission rules. While this type

---

<sup>3</sup> NPRM at ¶ 9.

<sup>4</sup> See Reply Comments of INCOMPAS, WC Docket No. 13-39 (filed June 19, 2018) (tying the impact of access stimulation schemes to the Commission’s efforts to increase rural call completion rates).

of self-help may allow IXC's to resolve instances of actual access stimulation, the technique has been routinely employed to handle unsubstantiated claims of access arbitrage where no such fraudulent behavior exists. These accusations undermine the legitimate switched access revenue streams on which many INCOMPAS members rely and unnecessarily complicate the intercarrier compensation regime.

INCOMPAS members routinely offer wholesale and local exchange services and have contested ongoing access stimulation schemes committed by other LECs that are willing to circumvent the Commission's existing rules. Despite their own efforts to eliminate access arbitrage, several INCOMPAS members have been incorrectly identified as "access stimulators" by IXC's, leading to disputes over switched access charges and billing. IXC's that would otherwise be required under Commission rules to compensate LECs for the traffic that they exchange have, in some of these situations, refused payment, insisting that the access charges associated with the traffic are the result of traffic pumping. Once an IXC engages in self-help over allegations of access stimulation, it can be difficult for competitive providers to take corrective action that will ensure it adequate compensation:

A carrier seeking to collect its access charges cannot threaten disconnection or refuse to provide additional service to the recalcitrant IXC because of the carrier's interconnection obligations. This allows a switched access customer to force a LEC . . . to undertake expensive, time-consuming, and burdensome court proceedings to collect its bills, while the IXC customer gets to keep the money unless and until the carrier bring suit and obtains a judgment.<sup>5</sup>

As noted, in order to contest these unfounded claims, INCOMPAS members are required to devote valuable resources to litigation as opposed to network deployment.<sup>6</sup> In order to avoid

---

<sup>5</sup> See Letter from Bandwidth Inc. to Marlene H. Dortch, WC Docket No. 18-155, WC Docket No. 10-90, CC Docket No. 01-92 (filed May 31, 2018), at 2.

<sup>6</sup> *Id.*

such disputes in the future, the Commission must establish clear rules about the ability of IXC's to engage in self-help and ensure that the notice requirement resolves any needless disputes over the identification of access stimulators.

Consequently, INCOMPAS supports the Commission's proposal to require access-stimulating LECs to notify IXC's and intermediate access providers of their intent to either accept financial responsibility for the applicable intermediate access provider terminating charges associated with its traffic or to connect directly to the IXC or an intermediate carrier of the IXC's choice. Additionally, INCOMPAS encourages the Commission to require an access-stimulating LEC to provide written notice of its choice to the FCC and that the agency then make that election public. Once this information is public, an IXC should no longer be permitted to engage in self-help against providers that have not self-identified as access-stimulating LECs. Instead, disputes over whether a LEC should self-identify as an access stimulator should be handled through the agency's formal complaint process. This should ensure that IXC's will not be allowed to make self-serving claims that LECs are participating in access stimulation and resolve many of the current disputes over switched access charges.

For the reasons stated herein, INCOMPAS urges the Commission to adopt the recommendations in its reply comment, as it considers the issues raised in the NPRM.

Respectfully submitted,

INCOMPAS

*/s/ Christopher L. Shipley*

Christopher L. Shipley  
INCOMPAS  
2025 M Street, NW  
Suite 800

Washington, D.C. 20036  
(202) 872-5746

August 3, 2018